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Supreme Court of the United States

OCTOBER TERM, 1944

NO. [redacted] 5

STATE OF NEW YORK AND SARATOGA SPRINGS COMMISSION AND SARATOGA SPRINGS AUTHORITY,

Petitioners,

v.

THE UNITED STATES OF AMERICA

BRIEF FOR

SARATOGA SPRINGS COMMISSION AND SARATOGA SPRINGS AUTHORITY

Petitioners.

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I

Status of Petitioners Commission and Authority

The petitioners Saratoga Springs Commission and Saratoga Springs Authority are the governmental agencies of the State of New York charged with the development of the Saratoga Reservation and Cure for public health purposes according to the declared policy of the State. (R. 13)

The interests of these agencies are identical with those of the petitioner State of New York, although they appeared and answered herein by their local counsel, who join in the arguments submitted by the Attorney General and limit this memorandum to certain considerations which these petitioners desire to further emphasize.

Following the depletion of the natural mineral springs at Saratoga Springs through excessive pumping, (See Hathorn v. Natural Carbonic Gas Co. 194 N. Y. 326; People of the State of New York v. The New Yor' Carbonic Acid Gas Co. 196 N. Y. 421) the Legislature of the State of New York by Chapter 569 of the Laws of 1909, (R. 21) appropriated the sum of $600,000. for the use of a board to be appointed by the Governor under the name and style of the Commissioners of the State Reservation at Saratoga Springs, "to select and locate such lands in the Town of Saratoga Springs, in the County of Saratoga, and any rights, easements or interest upon or in any lands in said Town as it should deem proper and necessary to be taken, for the purpose of preserving the natural mineral springs in said Town of Saratoga Springs, and of restoring said springs to their former natural condition." The act further declared that the properties so acquired should "become and be the property of the State of New York." (Section 2) This act was amended by Chapters 394 and 469 of the Laws of 1911, and the purposes of the State more definitely defined. By Section 4 of Chapter 394 of the Laws of 1911, "promoting the resort to the said springs of the people of the State for health and other suitable use of the said reservation by the people, and of identifying, safeguarding and assuring the natural purity, qualities and repute of such waters and gases and for the purpose of providing the said waters to the people for drinking free of charge" were added to the purposes already mentioned. The Board, by Section 5, was authorized to prescribe the terms upon which any excess of mineral water and gas not used on said reservation should be sold or distributed, and was authorized to sell or dispose of such excess of water. The appropriation was increased to $950,000. By Chapter 252 of the Laws of 1914, a further appropriation of $235,000. was authorized. Acting under these various enactments, large properties and numerous mineral springs were acquired and became vested in the State of New York; bath houses were built and the water ulitized for drinking and bathing purposes. Bottling and distribution of bottled waters was

accomplished through a lease to a private corporation. By Chapter 295 of the Laws of 1916, the powers of the Board of Commissioners of the State Reservation at Saratoga Springs were transferred to the Conservation Commission.

There were amendments to the Conservation Law in respect to the reservation at Saratoga Springs by Chapters 204 and 468 of the Laws of 1917, and by Chapters 203 and 619 of the Laws of 1926. By Chapter 866 of the Laws of 1930, a temporary state commission to be known as the Saratoga Springs Commission, was created "for the purpose of ultimately developing the Saratoga Springs Reservation as a State health resort and spa, for the use of the public for balneological, therapeutic and other similar healthful purposes." This act also stated that "the development of such reservation for public health purposes is hereby declared a policy of the State in accordance with the recommendations of the commission appointed pursuant to the provisions of Chapter 668 of the Laws of 1929."

By Section 4 of this act, "jurisdiction, supervision, possession and control of all the lands, properties, property rights and easements, mineral springs, wells and all the other adjuncts constituting the Saratoga Springs Reservation now possessed and exercised by the Conservation Department, acting by or through the Division of Saratoga Springs Reservation" were transferred to the Commission for the term of seven years. The Commission was expressly authorized and empowered to negotiate with the Saratoga Springs Waters Corporation for the modification of its lease above referred to, and subsequently it acquired all of the rights of this corporation for the unexpired term of the lease. By Chapter 279 of the Laws of 1937, this commission was continued as a permanent commission, subject to the approval, supervision and control of the Conservation Commissioner, in the same manner as prescribed by law for the Division of Parks.

The Saratoga Springs Authority was created by Chap

ter 208 of the Laws of 1933, as a "body corporate and politic constituting a public benefit corporation." It was to continue only for a period of four years and thereafter until its liabilities have been met and its bonds have been paid in full, or such liabilities or bonds have otherwise been discharged. Upon its ceasing to exist, all its rights and properties shall pass to the State of New York. This corporation is created for the purpose and charged with the duty of development of the Saratoga Cure for public health purposes in accordance with the declaration contained in Chapter 866 of the Laws of 1930, that the development of the Saratoga Springs Reservation for public health purposes is a policy of the State in accordance with the recommendations of the commission appointed pursuant to the provisions of Chapter 668 of the Laws of 1929. The Authority was given broad powers including the right to maintain, construct and operate the cure defined by the act to mean "the property of the Authority devoted to the therapeutic use of mineral water for baths and drinking and to the bottling and sale thereof" etc., and to issue bonds secured by the revenues of the cure, etc. It was also authorized to lease from the Commission any portion of the State Reservation at Saratoga Springs "now owned by the State of New York or which may hereafter be acquired, with the approval of the Governor, for a term not exceeding ninety years, at a nominal or such other rental as may be determined," and the Saratoga Springs Commission was authorized and empowered to enter into such lease, and did thereafter grant a lease of all of its properties to the Authority, which is still in existence, its bonded indebtedness not having been paid, and operating the Saratoga cure, as provided in said act.

The defendants are not engaged in any commercial enterprise for profit (R. 20), but on the contrary, are carrying out the declared policy of the State of New York to develop the Saratoga Springs Reservation as a State health resort and spa for use by the public for balneological, therapeutic and other similar healthful purposes.

In this enterprise, the State of New York has appropriated upwards of $5,600,000. for the purchase and improvement of the reservation property, all of which is owned by and vested in the State of New York and not in the Commission or Authority. (R. 30) This ownership includes mineral springs from which water is bottled and sold by the State as one method of distribution. The tax in question is on the property of and against the State. It is direct and not remote in its operation and effect, and is clearly in conflict with the state's immunity from taxation by the federal government.

II

The petitioners claim immunity from tax on sales of bottled waters incidental to and in furtherance of the State's health policy.

The trial court denied the claimed immunity upon the ground that the petitioners were engaged in a business enterprise conducted by the State for gain (R. 25). The affirming court accepted this basis among others (R. 36).

This basis lacks factual support in this case. The mineral waters at Saratoga are unique in their natural composition (R. 12). Those upon which the taxes in question were levied and which were bottled and sold in their natural state were Hathorn, a laxative water, Coesa, a diuretic water, and Geyser, a digestive water. A plain water known as State Seal, of high chemical and vegetable purity, used very largely in various State institutions and offices, was also sold in small amount (R. 14). These waters were in no sense a commercial product. Except State Seal, these waters are not suitable for indiscriminate beverage use, and cannot be mixed with fruit juices or alcoholic beverages (R. 14). It nowhere appears in the record and it is not a fact, that any of these natural mineral waters

are produced or sold by any other person or corporation. They are not a commodity capable of manufacture or production by anyone, but are a natural resource of the State, of limited territorial extent and practical State monopoly. No other natural or manufactured waters have exactly the same chemical content or the same State guarantee as to purity (R. 12, 14).

The Circuit Court of Appeals not only misconstrued these facts into what it characterized as "a common private enterprise," but found no distinction between the State's sales of these natural and unique waters in the interest of its health and conservation policy, and the traffic in alcoholic beverages held subject to a license tax in the South Carolina and Ohio cases. (199 U. S. 427; 292 U. S. 360).

The distribution of water for a great variety of purposes—ranging from ordinary agricultural, domestic and sanitary uses to the preservation of health and life—has been recognized as distinctly a governmental function.

> Brush v. Commissioner of Internal Revenue 300 U. S. 352, 366.

Neither the governmental function nor business enterprise test has escaped criticism. (See Mr. Justice Black's cogent remarks in Helvering v. Gerhardt, 304 U. S. 405, 426). Public opinion and political science now admit a much wider scope for essential governmental operations than the generation of Mr. Herbert Spenser would have approved. Tax immunity is as essential to the proper exercise of new functions as of old.

The business enterprise test standing alone has not been productive of much result until this case. In the cases where it has been heretofore invoked, it has either been found inapplicable, as in Indian Motor Cycle Co. v. U. S., 283 U. S. 570, or the tax has been capable of being sustained

upon some other basis as well, as in Board of Trustees of University of Ill. v. U. S., 289 U. S. 48, involving a duty under foreign commerce over which the United States had plenary power, or the South Carolina and Ohio liquor cases involving a license fee and not a tax on property, or Allen v. Regents, 304 U. S. 439, where the State was a mere collector. This test appears never to have been sufficiently virile to sustain a direct tax against a state's property or property transactions.

The court below did not rest entirely on the business enterprise test but sought a further or ultimate basis in the need of the state activity to maintain the states as they exist (R. 36). This is equally indefinite and not only involves the conflict of doctrine already mentioned but the further uncertainty as to the degree of danger and the effect of the tax from its amount which the court seems to have felt to be unstable considerations in Indian Motor Cycle Co. v. U. S., 283 U. S. 570.

The conditions which this court seems to have finally adopted as necessary to validity where states have attempted to tax the Federal Government or its instrumentalities, i.e., freedom from discrimination against transactions with the government and freedom from direct imposition upon the property and the instrumentalities of the government (See dissenting opinion of Mr. Justice Frankfurter in United States v. Allegheny County, Pa., 64 Supreme Court Reporter 908, 919) seems equally applicable to Federal efforts to burden the states.

The tax was improperly imposed upon the petitioners not only because it was a direct tax contrary to the conditions above referred to but also because in distributing its medicinal waters the State was not engaged in business within the meaning of the business enterprise test, but was exercising a recognized governmental function.

The judgment should be reversed and the complaint dismissed.

All of which is respectfully submitted.

Dated at Saratoga Springs, N. Y., Oct. 7, 1944.

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